

82-1212

No.

IN THE
Supreme Court of the United States
October Term, 1982

JACK ANTHONY GULLO

Appellant,

v.

JOHN F. McGILL, and
MARGARET S. McGILL, his wife,

~~and~~
~~EDWIN L. MIRST, and~~
~~MARGARET S. MIRST, his wife,~~

~~and~~
~~DAVID L. LAMBERT,~~

Appellees.

APPEAL FROM THE CIRCUIT COURT OF
FAIRFAX COUNTY OF THE NINETEENTH
JUDICIAL CIRCUIT OF THE STATE OF VIRGINIA

JURISDICTIONAL STATEMENT

JOSEPH S. GULLO
Counsel for Appellant
5899 First Street, South
Arlington, Virginia 22204
Phone: (703) 671-2352

QUESTION PRESENTED

Whether McGills' testimony corroborated by their deed to them dated August 6, 1965, together with their certificate of title and title insurance policy Appendix B, applied to the final order of the Circuit Court of Fairfax County dated September 4, 1981, Appendix C, and to *Virginia Code Title 8.01 Section 236*, makes such order and statute repugnant to and void under the *14th Amendment of the Constitution of The United States* and to the *Constitution of the State of Virginia Article 1 Section 11*?

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**IN THE
Supreme Court of the United States
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JACK ANTHONY GULLO

Appellant,

v.

**JOHN F. MCGILL, and
MARGARET S. MCGILL, his wife,**

and

**EDWIN L. HIRST, and
MIRIAM ANNE HIRST, his wife,**

and

BRUCE E. LAMBERT,

Appellees.

**APPEAL FROM THE CIRCUIT COURT OF
FAIRFAX COUNTY OF THE NINETEENTH
JUDICIAL CIRCUIT OF THE STATE OF VIRGINIA**

JURISDICTIONAL STATEMENT

Appellant submits herewith his jurisdictional statement as required by Rule 15 of The Supreme Court of The United States.

OPINION BELOW

The unreported opinion of the Circuit Court of Fairfax County, Virginia, is attached hereto as Appendix B.

GROUNDS OF JURISDICTION

Appellant brought this suit pursuant to Virginia Code Title 55 Section 153, as amended 1950, *Watson v. Mose*, 183 S.E. 428, 165 Va. 661 (1936) To Quiet Title on his property. The final order, Appendix C, recites that appellees, The McGills, have had the property in their possession *by a claim of title* against all persons from about August 6, 1965, to the present by adverse possession pursuant to Virginia Code Title 8.01 Section 236, as amended 1978, which is contrary to appellees, The McGills', testimony and documentary evidency, Appendix B.

The court erroneously applied McGills' testimony and their title documentary evidence, Appendix B, to Virginia Code Title 8.01 Section 236. The erroneous application of McGills' testimony and title documentary evidence, Appendix B, to Virginia Code Title 8.01 Section 236 makes the final order entered on September 4, 1981, Appendix C, and Virginia Code Title 8.01 Section 236, repugnant to and void under the 14th Amendment of the Constitution of The United States and under the Constitution of the State of Virginia, Article 1 Section 11. The void order and void statute deprives appellant the equal protection under the Constitution.

McGills' deed dated August 6, 1965, together with their certificate of title and title insurance policy, Appendix B, prove that the McGills at all times believed that they have owned and have held appellant's property pursuant to a lawful title by virtue of the deed to them dated August 6,

1965, together with their certificate of title and title insurance policy. It also proves that the McGills never intended to acquire, hold, and possess, appellant's property by claim of title by adverse possession pursuant to Va. Code Title 8.01 Section 236 to the exclusion of all others, irrespective of any semblance of paper or paper legal title, as that term "*claim of title*" was applied and construed in *Walton v. Rosson*, 222 S.E. 553 (1976), 216 Va. 732, 735; *Hyson v. Dodge*, 96 S.E. 2nd 792, 198 Va. 792; *Christon v. Bulbeck*, 99 S.E. 661, 120 Va. 74, 101; *Stuart v. Meade*, 89 S.E. 866, 119 Va. 753, 761.

The jurisdiction of The Supreme Court of The United States to review the decision of The Circuit Court of Fairfax County, Virginia, Appendix C, by direct appeal is conferred pursuant to Title 28 U.S.C. Section 1252(2), *Dahnke-Walker Milling Co. v. Bondurant*, 257 U.S. 282 (1921), 42 Supreme Court 106.

Appellant first raised the Constitutional question in his Petition For Appeal to the Supreme Court of Virginia because he did not have the opportunity to raise it in the trial court, The Circuit Court of Fairfax County, Virginia.

In his Assignments of Error, Petition For Appeal page 9, appellant states:

The final order entered on September 4, 1981, Appendix C, is contrary to the evidence and the law and it violates appellant's constitutional rights by depriving him of his property without the due process and equal protection of the law. In his Petition For Appeal page 8, appellant continues:

"McGills' testimony corroborated by their own title documents (Appendix B) clearly proves that they could not as a matter of law acquired by adverse possession under Virginia Title 8.01 Sec-

tion 236, the property rightfully and legally belonging to the plaintiff." (Appellant)

"The order is in violation of plaintiff's constitutional rights under the 14th Amendment of the Constitution of the United States and Article 1 Section 11 of the Constitution of the State of Virginia by depriving plaintiff of his property without the due process and equal protection of the law."

On September 8, 1981, appellant duly filed his Narrative Statement of Proceedings and Evidence pursuant to The Virginia Supreme Court Rules, Rule 5.9, which the Circuit Court of Fairfax County refused to certify. Rules 5.9 and 5.11 require the court to certify the Statement.

On September 21, 1981, appellant duly filed his Notice of Appeal. On December 1, 1981, appellant duly filed his Petition For Appeal with The Supreme Court of Virginia.

The Virginia Supreme Court entered its order on September 13, 1982, attached hereto as Appendix D, refusing appellant's Petition For Appeal, because it was not perfected in the manner required under The Virginia Supreme Court Rules, Rules 5.9 and 5.11, Appendix A.

On October 15, 1982, The Virginia Supreme Court entered an order attached hereto as Appendix E, denying appellant's petition filed on September 27, 1982, to reverse the order of The Circuit Court of Fairfax County on grounds that Rules 5.9 and 5.11 required it as a matter of law to certify appellant's Narrative Statement of Pro Virginia Code Title 55 Section 153, *Watson v. Mose*, 183 S.E. 428, 165 Va. 661 (1936).

On November 24, 1982, appellant filed his Notice of Appeal to the Supreme Court of The United States in the Circuit Court of Fairfax County, Virginia.

Appellees, Edward L. Hirst and Miriam Anne Hirst, his wife, are not parties to this appeal because appellant was not able to have service of process made upon them. The trial court granted Lambert's motion to deny appellant's motion to compel him to disclose the address or whereabouts of his clients, the Hirsts. The trial court granted Lambert's motion to dismiss him as a party on the ground that he has no interest in appellant's property.

STATEMENT OF THE CASE

On November 3, 1980, appellant filed his Verified Bill of Complaint To Quiet Title on his home known as 7516 Walton Lane, Fairfax County, Virginia, pursuant to Virginia Code Title 55 Section 153, *Watson v. Mose*, 183 S.E. 428, 165 Va. 661 (1936).

Appellant and appellee Miriam Anne Hirst, appellant's former wife, purchased the property as tenants by the entirety by deed dated September 30, 1952, recorded October 1, 1952, in Book No. 1007 Page 519 in the land records of Fairfax County, Va. On April 28, 1961, they became owners of the property as tenants in common pursuant to Virginia Code Title 20 Sections, 107, 111, as amended 1950, by virtue of their divorce decree dated April 28, 1961, entered In Chancery Order Book No. 73 Page 45, recorded in the land records of Fairfax County, Virginia.

On December 26, 1962, while appellant was a resident of the District of Columbia and a non-resident of the State of Virginia, appellee, Miriam Anne Hirst in concert with her attorney, appellee Bruce E. Lambert, willfully and fraudulently sued out an attachment before judgment against appellant's property in connection with their Civil Action No. 10501 then pending in the Circuit Court of Fairfax County, Va., which they had filed against the ap-

pellant. On February 6, 1961, Appellee Miriam Anne Hirst and her attorney, appellee Bruce E. Lambert, sued out the attachment against appellant's property while it was under their control and possession. Thereupon, while the attachment lien was still pending against the property, Miriam Anne Hirst in concert with her attorney, Bruce E. Lambert, contrary to *William v. Bowie*, 20 Va. (6 Mum) 176, willfully and fraudulently conveyed the property to Edward L. Hirst and Miriam Anne Hirst, his wife, by deed dated February 21, 1963, recorded March 4, 1963, in Book No. 2258 Page No. 174 in the land records of Fairfax County, Virginia.

By deed dated August 6, 1965, recorded August 17, 1965, in Book No. 2653 Page 143 in the land records of Fairfax County, Virginia, while the attachment lien was still pending against the property, Edward L. Hirst and Miriam Anne Hirst, his wife, in violation of Virginia Code Title 55 Section 80, as amended 1950, — Fraudulent Conveyances — fraudulently conveyed the property to their transferees, appellees, John F. McGill and Margaret S. McGill, his wife, *Crowder v. Crowder*, 99 S.E. 746, 12 Va. 80.

The recordation of the said deeds and divorce decree in the land records of Fairfax County, Virginia, furnished notice to the Hirsts and their transferees, The McGills, that appellant and appellee Miriam Anne Hirst, are and have been owners of record of the property as tenants in common.

On June 25, 1976, the Circuit Court of Fairfax County entered a final order In Civil Action No. 10501 and Attachment Law No. 11441, attached hereto as Appendix F, in favor of appellant dismissing appellee's Miriam Anne Hirst, Civil Action No. 10501 and Attachment Law No. 11441 and further Ordered the release of the attachment lien against appellant's property.

Upon the entry of the final order In Civil Action No. 10501 and Attachment Law No. 11441, Appendix F, in favor of the appellant, appellant became entitled by Virginia Code Title 8.01 Section 568, as amended 1950, to the return of his attached property, damages for the loss of his property, and costs, Appendix A.

Pursuant to such statute, Va. Code Title 8.01 Section 568, appellant filed his Bill of Complaint To Quiet Title pursuant to Virginia Code Title 55 Section 153, *Watson v. Mose* 183 S.E. 428, 165 Va. 661.

THE QUESTION IS SUBSTANTIAL

It is submitted that the decision of the Circuit Court of Fairfax County, is void and repugnant to the Constitution of the United States. The erroneous application of McGills' testimony and title documentary evidence, Appendix B, to Virginia Code Title 8.01 Section 236 makes Virginia Code Title 8.01 Section 236 repugnant to and void under the Constitution of the United States and the Constitution of the State of Virginia. The decision deprives appellant of his property without the equal protection under the Constitution.

Respectfully submitted,
Joseph S. Gullo
Counsel for Appellant

CERTIFICATE OF SERVICE

I hereby certify that I mailed, postage prepaid, 3 copies of the foregoing Brief to Steven W. Bancroft and Richard Lewis, attorneys for the appellees, The McGills, at their office address 4103 Chain Bridge Road, P.O. Box 22, Fairfax, Virginia, this day of January, 1983.

Joseph S. Gullo
Counsel for Appellant.

APPENDIX A

CONSTITUTION AND STATUTES AND RULES OF COURT INVOLVED

1. Constitution of the United States 14th Amendment-
Section 1-

"nor shall any State deprive any person of . . .
property without . . . the equal protection of the
law."

2. Constitution of The State of Virginia, Article 1 Sec-
tion 11 -

"That no person shall be deprived of his . . .
property without the due process of law . . ."

3. Virginia Code Title 55 Section 153, as amended
1950

"When a bill in equity is filed to remove a cloud
in the title of real estate . . . the court shall grant
the complainant such relief as he would be enti-
tled to to if he held the legal title and was in-
possession." citing *Watson v. Mose*, 183 S.E.
428, 165 Va. 661, (1936).

4. Virginia Code Title 8.01 Section 236, as amended
1950.

"No person shall make an entry on, or bring an
action to recover, any land unless within fifteen
years next after the time at which the right to
make such entry or bring such action shall have
first accrued to such person or to some other per-
son through whom he claims." *United States v.*
Belle View Apts, 217 F.2nd 636 (4th Cir. 1954)

5. Virginia Code Title 55 Section 80, as amended 1950,

"Every conveyance . . . of any estate, real or personal, given with intent to delay, hinder or defraud persons of or from what they are or may be lawfully entitled to shall as to such . . . other person, . . . be void" *Crowder v. Crowder*, 99 S.E. 746, 125 Va. 80 (1919).

6. Virginia Code Title 8.01 Section 568, as amended 1950,

"If . . . the claim of the plaintiff (Hirst) is not established a final judgment shall be given for the defendant . . . he shall recover his costs, and damages for loss of his property, and there shall be an order for the restoration of the attached effects."

RULES OF THE SUPREME COURT OF VIRGINIA:

Rule 5:11

"The judge shall . . . sign the (Narrative) written statement to verify its accuracy." *Harris v. Woodby, Inc.* 128 S.E. 278, 203 Va. 946 (1962).

APPENDIX B

VIRGINIA:

**IN THE CIRCUIT COURT
FOR THE COUNTY OF FAIRFAX**

JACK ANTHONY GULLO	*	
Plaintiff,	*	
vs.	*	In Chancery
		No. 69110
JOHN F. McGILL and	*	
MARGARET S. McGILL, his wife	*	
and	*	
EDWIN L. HIRST and	*	
MIRIAM ANNE HIRST, his wife	*	
and	*	
BRUCE E. LAMBERT	*	
Defendants,	*	

Chy 69110 Jack Gullo	Gullo
John McGill	Bancroft

7-2-81 Judge Bach CTR:

**△dismiss due to adverse possession
" objects to hearing today (Gullo)**

Argument

△ Witnesses

- 1) John McGill
- 2) Mrs. McGill
- △ rests

(Defendants)

△ Exhibits

- Adm 1) 1952 Deed (9/24/52)
- Adm 2) 1963 Deed (2/27/63)
- Adm 3) 1965 Deed (8/6/65)
- Adm 4) Divorce Decree
- Adm 5) certificate of title
- Adm 6) settlement sheet (8/6/65)
- Adm 7) Closing data sheet 8/16/65
- Adm 8) Plat-physical [sic] survey
- Adm 9) Arl Exterminators termite report - 7/15/65

" - proffered Exh

#3 as his evidence (Gullo)

" Rests -

Argument

Court -¹ McGill's adverse
possession is real, etc.
uninterrupted for more
than 15 yrs.

Title is clear

△ Exh (Gullo)

- Adm 1) transcript - March 18, 1981
[McGills' Testimony]
Sheet that shows
- Adm 2) assessed value of property
- Adm 3) Affidavit

Put in as

"s proferr [sic] of what (Gullo's)

"s evidence would be

Case Dismissed

C: Appendix A

KS

APPENDIX C**VIRGINIA:****IN THE CIRCUIT COURT
FOR THE COUNTY OF FAIRFAX**

JACK ANTHONY GULLO	*	
Plaintiff,	*	
vs.	*	In Chancery
		No. 69110
JOHN F. McGILL and	*	
MARGARET S. McGILL, his wife	*	
and	*	
EDWIN L. HIRST and	*	
MIRIAM ANNE HIRST, his wife	*	
and	*	
BRUCE E. LAMBERT	*	
Defendants,	*	

ORDER

THIS MATTER came on to be heard upon the Motion of John F. McGill and Margaret S. McGill to dismiss this action for the reasons that it is barred by the applicable statute of limitations and the doctrine of adverse possession, and after consideration of the pleadings filed herein, memoranda submitted by the parties, testimony of the witnesses, documentary evidence, stipulations, argument of counsel, and

IT APPEARING TO THE COURT that clear and satisfactory evidence was presented by the defendants, proving that John F. McGill and Margaret S. McGill have

been in continual and uninterrupted possession of the property commonly known as 7516 Walton Lane, Annandale, Virginia, Fairfax County in an actual, exclusive, hostile, visible, open, and notorious manner accompanied by a bona fide claim of title against all persons from on or before August 6, 1965, to present, and that the Bill of Complaint filed by plaintiff herein is untimely in that more than fifteen (15) years have passed from the date said action accrued to the date of filing, and in consideration whereof, it is, therefore,

ADJUDGED, ORDERED and DECREED that JOHN F. MCGILL and MARGARET S. MCGILL be and hereby are dismissed from this action with prejudice on the grounds that the statute of limitations has run in this action, and the applicability of doctrine of adverse possession, and further, it is

~~ADJUDGED, ORDERED and DECREED that JOHN F. MCGILL and MARGARET S. MCGILL have clean and absolute title to the real estate and property that was the subject matter of this action pursuant to Section 8.01-236 of the Code of Virginia,~~

FBB

IT IS FURTHER directed that the transcript of the July 2, 1981, hearing is to become a part of the record.

ENTERED this 4th day of September 1981.

/s/

F. BRUCE BACH, Judge

I ASK FOR THIS:

/s/

Steven W. Bancroft, Esquire
Counsel for defendants, John F.
McGill and Margaret S. McGill

SEEN AND OBJECTED TO:

/s/

Joseph S. Gullo, Esquire
Counsel for Plaintiff, Jack
Anthony Gullo

A COPY TESTE:
JAMES E. HOOFNAGLE,
CLERK

By: /s/
Deputy Clerk

APPENDIX D

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Monday the 13th day of September, 1982.

Jack Anthony Gullo, Appellant,

against Record No. 812042
 Circuit Court No. C-69110

John F. McGill, et al., Appellees.

From the Circuit Court of Fairfax County

Finding that the appeal was not perfected in the manner required by law, the court refuses the petition for appeal filed in the above-styled case. Rules 5:9 and 5:11.

A Copy,

Teste:

Allen L. Lucy, Clerk

By:

/s/

Deputy Clerk

APPENDIX E

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 15th day of October, 1982.

Jack Anthony Gullo, Appellant,

against Record No. 812042
 Circuit Court No. C-69110

John F. McGill, et al., Appellees.

Upon a Petition for Rehearing

On consideration of the petition of the appellant to set aside the judgment rendered herein on the 13th day of September, 1982, and grant a rehearing thereof, the prayer of the said petition is denied.

A Copy,

Teste:

/s/

Allen L. Lucy, Clerk

APPENDIX F**VIRGINIA:****IN THE CIRCUIT COURT OF FAIRFAX COUNTY**

MIRIAM ANNE HIRST	*	
	Plaintiff,	*
vs.	*	LAW NO. 10501
	*	
JACK ANTHONY GULLO	*	and
and	*	
JOE S. GULLO	*	ATTACHMENT
	Defendants	PETITION
	*	LAW NO. 11441
and	*	
QUIN S. ELSON, SPECIAL	*	
COMMISSIONER OF SALE IN	*	
DIVORCE DECREE, CHANCERY	*	
No. 15253	*	
	Co-Defendant.	*

ORDER

The above entitled actions came on to be heard on the merits without a jury this 20th day of May, 1976, upon the Motion For Judgment based on an action for Malicious Prosecution and the Attachment Petition together with the Writ of Attachment issued and served upon CO-Defendant on December 21, 1962, of the Plaintiff, Miriam Anne Hirst; upon the Answer and Grounds of Defense of the Defendant, Jack Anthony Gullo; upon the Answer and Grounds of Defense of the Defendant, Joe S. Gullo; upon Defendants' Motion To strike out all plaintiff's evidence at the conclusion of taking of the plaintiff's evidence in chief; and after argument thereon in open court by counsel for both parties herein; and thereupon, upon consideration thereof, it is, by the Court, this 25th day of June, 1976,

ORDERED, ADJUDGED AND DECREED:

1. That said motion be and the same is hereby sustained, and that Plaintiff's Motion For Judgment, Attachment Petition, and Writ of Attachment be and the same are hereby dismissed.

2. That the lien on the property of Defendant, Jack Anthony Gullo, created by the said Writ of Attachment issued and served upon CO-Defendant on December 21, 1962, be and the same is hereby released.

3. And that Plaintiff's exception to the foregoing ruling of the Court is herein noted.

ORDER Entered: This 25th day of June, 1976.

/s/

Judge Burch Millsap

SEEN:

/s/

Joseph S. Gullo, pro-se, and Attorney for Defendants

/s/

**Lambert and Lambert, Bruce E. Lambert,
Attorney for Plaintiff**

Quin S. Elson, Special Commissioner of Sale

**A COPY TESTE:
JAMES E. HOOFNAGLE,
CLERK**

By: /s/
Deputy Clerk

APPENDIX G

FILED
NOV 24 1982
James E. Hoofnagle
 Clerk of the Circuit
 Court of Fairfax
 County VA

VIRGINIA:

**IN THE CIRCUIT COURT
 FOR THE COUNTY OF FAIRFAX**

JACK ANTHONY GULLO	*	
Appellant	*	
vs.	*	Chancery
	*	No. 69110
JOHN F. MCGILL and	*	
MARGARET S. MCGILL, his wife	*	
and	*	
EDWIN L. HIRST and	*	
MIRIAM ANNE HIRST, his wife	*	
and	*	
BRUCE E. LAMBERT	*	
Appellees	*	

**NOTICE OF APPEAL TO THE SUPREME COURT
 OF THE UNITED STATES**

Notice is hereby given that Jack Anthony Gullo, the appellant above named, hereby appeals to the Supreme Court of the United States from the final order of The Circuit Court For The County of Fairfax, Virginia dismissing appellees, John F. McGill and Margaret S. McGill, his wife, as party defendants from appellant's verified Bill of Complaint To Quiet on his real estate pursuant to Virginia Code Title 55 Section 153, as amended 1950, entered in

this cause on September 4, 1981. The McGills were dismissed as party defendants on the ground that they acquired appellant's property by adverse possession under Virginia Code Title 8.01 Section 236, as amended 1978.

This appeal is taken pursuant to 28 U.S.C. Section 1257(2).

The clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of The Supreme Court of the United States and include in said transcript the following:

All the papers listed in The Table of Contents to the record, pages 1 to 222, including the exhibits, affidavits, depositions, a copy of each order, a copy of the final order entered September 4, 1981, the court reporter's transcript of the hearing had on July 2, 1981, appellant's Narrative Statement of Evidence and Proceedings filed September 8, 1981.

The following questions are presented by this appeal:

1. Does McGills' testimony corroborated by their documentary evidence applied to the final order in this cause entered on September 4, 1981, which recites on its face that the McGills acquired appellant's property by adverse possession under Virginia Code Title 8.01 Section 236, as amended 1978, make such statute, Va. Code Title 8.01 Section 236 and final order void under The 14th Amendment of the Constitution of the United States since such statute deprives appellant of his property without the due process and equal protection of the law?

McGills' testimony corroborated by their documentary evidence shows, clearly and unequivocally, that they purchased appellant's property, that it was conveyed to them by deed dated August 6, 1965, that they continued to own,

hold, and possess appellant's property under lawful title by virtue of the deed to them dated August 6, 1965, together with their certificate of title and title insurance.

2. Does McGills' testimony corroborated by their own documentary evidence prove they purchased, owned, and held appellant's property under lawful title by virtue of the deed to them dated August 6, 1965, or does McGills' testimony corroborated by their own documentary evidence prove they intended to acquire, possess, and own appellant's property to the exclusion of all others, irrespective of any semblance of paper or legal title by adverse possession under Virginia Code Title 8.01 Section 236?

Defendants, Edward L. Hirsh, Miriam Anne Hirst, and Bruce E. Lambert are not parties to this appeal. The court granted Lambert's motion to dismiss him as a party on the ground that he has no interest in the property. Service of process was not made upon the Hirsts. The court granted Lambert's motion to deny appellant's motion to compel him to disclose the whereabouts and address of his client, the Hirsts.

/s/

Joseph S. Gullo, Attorney for appellant
5899 First Street South
Arlington, VA 22204
(703) 671-2352

CERTIFICATE OF SERVICE

I hereby certify that I mailed a copy of the foregoing Notice of Appeal to Steven W. Bancroft and Richard Lewis Attorneys for the McGills, 4103 Chain Bridge Road, P.O. Box 22, Fairfax, Virginia, November 24 1982.

Joseph S. Gullo